SCOTTISH STATUTORY INSTRUMENTS

2005 No. 468

MENTAL HEALTH

The Mental Health (Use of Telephones) (Scotland) Regulations 2005

Made - - - -	*26th September 2005*
Coming into force - -	*5th October 2005*

The Scottish Ministers, in exercise of the powers conferred by section 284 of the Mental Health (Care and Treatment) (Scotland) Act 2003(**a**), and of all other powers enabling them in that behalf, hereby make the following Regulations, a draft of which has, in accordance with section 326(4)(c) of that Act, been laid before and approved by resolution of the Scottish Parliament:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Mental Health (Use of Telephones) (Scotland) Regulations 2005 and shall come into force on 5th October 2005.

(2) In these Regulations–

"the 2003 Act" means the Mental Health (Care and Treatment) (Scotland) Act 2003;

"intercept" has the meaning given by section 284(7) of the 2003 Act.

Specified persons

2.—(1) For the purposes of section 284(1) of the 2003 Act a person detained in hospital is a specified person if either of the conditions in paragraph (2) and both of the conditions in paragraphs (3) and (4) are met.

(2) The conditions in this paragraph are either–

(a) the responsible medical officer has within the last 6 months, starting with the date of recording, recorded a reasoned opinion that a telephone call made to or by the person detained may cause distress to the person detained or any other person who is not on the staff of the hospital, or a significant risk to the health, safety or welfare of the person detained or the safety of others; or

(b) the person is detained in a state hospital.

(3) The hospital managers have informed the person detained, unless to do so would, in the opinion of the responsible medical officer, be prejudicial to the person's health or treatment, that person's named person and the Commission–

(a) that the person detained is to be a specified person; and

(b) where applicable to the person in question, the date of the recording of the opinion mentioned in paragraph (2)(a).

(**a**) 2003 asp 13; see section 329 for the definition of "regulations".

(4) The hospital managers have informed the person detained, unless to do so would, in the opinion of the responsible medical officer, be prejudicial to that person's health or treatment, and that person's named person that the use of telephones by a specified person may be prohibited or restricted and that a specified person has the right to the reviews mentioned in regulations 3 and 6.

Review of the reasoned opinion

3.—(1) Where the responsible medical officer has recorded a reasoned opinion as mentioned in regulation 2(2)(a), the specified person shall, on request, be entitled to a review of that opinion by that officer but not more than once during the period of 6 months mentioned in that regulation.

(2) On such a review, after considering any representations made by the specified person or that person's named person, the responsible medical officer shall reassess the likelihood of the distress or risk mentioned in regulation 2(2)(a) and decide whether or not to confirm the reasoned opinion for the remainder of that period.

(3) The responsible medical officer shall inform the person who is the subject of the review and that person's named person and the Commission of the outcome of the review.

Right to use telephones

4.—(1) Specified persons have the right to use telephones subject to the provisions of these Regulations.

(2) Specified persons shall be liable to pay for the cost of telephone calls made by them or on their behalf.

Prohibition and restriction of the use of telephones

5.—(1) The following provisions prohibit or restrict the use of telephones by a specified person.

(2) When a specified person proposes to make a telephone call to a person or a telephone call is received from a person for a specified person and the call is, in the opinion of the specified person's responsible medical officer likely to cause–

(a) distress to the specified person or any other person who is not on the staff of the hospital; or

(b) a significant risk to the health, safety or welfare of the specified person or the safety of others,

the responsible medical officer shall prohibit the specified person from using the telephone to make that call to, or, as the case may be, to receive that call from the person in question.

(3) Subject to paragraph (4) if in the opinion of a specified person's responsible medical officer the use of a telephone generally by the specified person is likely to cause the distress or risk mentioned in paragraph (2) the responsible medical officer shall prohibit the specified person from using the telephone for a period of time not exceeding 3 months.

(4) If, in the opinion of a specified person's responsible medical officer, with due regard to minimising the impact on the freedom of the specified person, such distress or risk would be removed or significantly reduced by restricting the number, frequency or duration of telephone calls made to or by a specified person in any particular way, or restricting the persons to or from whom a specified person may make or receive calls, paragraph (3) shall not apply but, subject to paragraph (5) the responsible medical officer shall restrict the use made of the telephone by the specified person accordingly for a period of time not exceeding 3 months.

(5) Paragraph (2) applies irrespective of whether or not the responsible medical officer has restricted the specified person from using the telephone as mentioned in paragraph (4).

Review of prohibitions and restrictions

6.—(1) Where the responsible medical officer has prohibited or restricted the use of a telephone in any period as mentioned in regulation 5(3) or (4), a specified person shall, on request, be entitled to a review.

(2) Where the responsible medical officer has prohibited a specified person from making any telephone call to or receiving any telephone call from a particular person under regulation 5(2) and has done so continuously for a period of 7 days, that specified person shall, on request be entitled to a review of those decisions but not more than once in respect of any period of 7 days.

(3) On review, after considering any representations made by the specified person or that person's named person, the responsible medical officer shall reassess the likelihood of the distress or risk mentioned in regulation 5(2) and the matters mentioned in regulation 5(4) and may as a result of such re-assessment, and with due regard to minimising the impact on the freedom of the specified person, discontinue any prohibition or restriction or impose for a period of time not exceeding 3 months any prohibition or restriction that could have been imposed under regulation 5.

(4) The responsible medical officer shall inform the person who is the subject of the review, that person's named person and the Commission of the outcome of the review.

Interception of telephone calls

7.—(1) Subject to paragraphs (2) and (3) the managers of a hospital are authorised to intercept or arrange for the interception of any telephone call to a specified person or made by a specified person–

(a) for the purpose of enforcing regulation 5; or

(b) which would be unlawful for any reason other than one arising by virtue of these Regulations.

(2) Paragraph (1) does not authorise the interception of a telephone call made by a specified person to a person mentioned in sub-section (6) of section 284 of the 2003 Act unless–

(a) the person has requested the interception of telephone calls made by the specified person to that person; or

(b) the telephone call is or would be unlawful for any reason other than one arising by virtue of these Regulations.

(3) Paragraph (1) does not authorise the interception of a telephone call to a specified person by a person mentioned in sub-section (6) of section 284 of the 2003 Act unless the telephone call is or would be unlawful for any reason other than one arising by virtue of these Regulations.

Records

8. The managers of a hospital are required to make and maintain a record of the following matters–

(a) any decision on the part of the responsible medical officer to prohibit or restrict any use of the telephone by a specified person;

(b) any period of prohibition of telephone calls to or by a specified person;

(c) any period of restriction of telephone calls to or by a specified person and the nature of the restriction;

(d) the grounds for restriction or prohibition; and

(e) the date and outcome of any review of the restriction or prohibition.

Persons to be informed

9. The managers of a hospital are required to inform–

(a) the specified person, unless to do so would, in the opinion of the patient's responsible medical officer, be prejudicial to the person's health or treatment;

(b) the specified person's named person; and

(c) the Commission

of the matters specified in regulation 8.

Commission's power to make directions

10. The Commission shall have the power to give directions to the managers of a hospital on any of the following matters–

(a) not to treat a person detained in a hospital as a specified person;

(b) not to prohibit or restrict a telephone call to or by a specified person; and

(c) to reduce the period of time for which a restriction or prohibition applies.

Hospital managers to comply with Commission's directions

11. The managers of a hospital are required to comply with any directions given under regulation 10.

Scottish Information Commissioner

12. For the purposes of section 284(6)(d) of the 2003 Act, the Scottish Information Commissioner is specified.

LEWIS MACDONALD
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
26th September 2005

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 284 of the Mental Health (Care and Treatment) (Scotland) Act 2003 ("the Act") provides for regulation of the use of telephones by such persons detained in a hospital as may be specified in Regulations. These Regulations specify the persons whose use of telephones may be regulated and the conditions of use.

Regulation 2 provides that 3 conditions must be met for a patient to become a specified person. The first is that either the patient is in a state hospital or the responsible medical officer has recorded an opinion, giving reasons, to the effect that telephone calls to or from the patient might cause distress to the patient or any other person not on the staff of the hospital, or a significant risk to health, safety or welfare.

The second is that the patient, the patient's named person and the Mental Welfare Commission for Scotland ("the Commission") must have been informed that the patient is to be a specified person and the date of the responsible medical officer's opinion, if applicable.

The third is that the patient and patient's named person must also have been informed that the telephone calls of a specified person may be prohibited or restricted and that there is a right to a review of the prohibition or restriction.

Regulation 3 provides for a review against being specified at the request of the patient or the patient's named person.

Regulation 4 confers rights on specified persons to use telephones subject to the Regulations. Specified persons are liable for call charges.

Regulation 5 provides that individual calls or the use of the telephone generally may be prohibited or calls may be restricted as to number, frequency or duration, or the persons to or from whom calls may be made or received. The grounds for prohibition or restriction are that telephone calls or use of the telephone generally would cause distress or a significant risk to the health, safety or welfare of the specified person or others.

Regulation 6 contains review provisions. The specified person can request a review in any period of prohibition or restriction. If all of the patient's calls to or from one person are prohibited in a 7 day period, the patient is entitled to request a review. At a review the responsible medical officer must reassess the situation and can discontinue or impose any prohibition or restriction that could have been imposed under regulation 5.

Regulation 7 provides that calls that have been prohibited or restricted or calls that are unlawful may be intercepted.

Under regulation 8, the hospital managers are to keep a record of the restriction and prohibition of telephone use. They must inform the persons listed in regulation 9 of these matters.

Regulation 10 provides that the Commission has power to direct the hospital managers not to restrict or prohibit a call, to reduce the time for which a restriction or prohibition applies and not to treat a person detained in hospital as a specified person. Regulation 11 requires hospital managers to comply with a direction from the Commission.

Under regulation 12, the Scottish Information Commissioner is added to the list of persons to or from whom telephone calls may not be intercepted unless the interception has been requested by a person on the list or the call is unlawful for some other reason.

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